

Annex – Frequently asked questions on implementing the new provisions on Fair Access Protocols and admissions priority for children adopted from state care outside of England

Fair Access Protocols (FAPs)

The new School Admissions Code 2021 (the 2021 Code) sets out a number of new provisions in relation to FAPs. These include:

- extending the mandatory categories of children who can be placed via the FAP to include children on a Child in Need/Child Protection Plan, children in refuge, children in formal kinship care arrangements, children who have been out of education for four or more weeks and previously looked after children for whom the local authority has been unable to promptly secure a school place;
- removing the ability for local authorities to introduce their own FAP categories and prohibiting the routine use of FAPs in place of the usual in-year admissions process;
- requiring that placement decisions need to be made within 20 school days of a child being referred to the FAP.

When should new FAPs come into operation in order to comply with the new provisions in the 2021 Code?

Local authorities must make changes to their existing FAPs in order to give effect to the new provisions in the 2021 Code, which come into force on 1 September. This means that a new FAP will be operational on 1 September.

As the 2021 Code requires FAPs to be consulted upon and developed in partnership with all schools in the area, local authorities must consult all the admission authorities in their area about the changes they intend to take forward before doing so.

Admissions priority for children adopted from state care outside of England

The 2021 Code requires children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted to be given equal first priority in admission arrangements, alongside looked after children (LAC) and children who were previously looked after by English local authorities (PLAC). This advice refers to these children as internationally adopted previously looked after children – “IAPLAC”.

What action must admission authorities take in order to comply with the new IAPLAC provision?

Paragraph 1.7 of the 2021 Code will require that highest priority is given to “looked after children and all previously looked after children, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted”.

This new provision will necessitate variations to determined admission arrangements to take effect from 1 September 2021. Admission authorities will need to vary their admission arrangements for 2021/22 (which would have been determined by 15 February 2020) and their admission arrangements for 2022/23 (which would have been determined by 15 February 2021). Without these variations, admission arrangements that have already been determined will not comply with the 2021 Code.

We expect admission authorities to hold a meeting sometime between now and 31 August 2021 to determine the necessary variations to admission arrangements for 2021/2022 and 2022/2023. All such variations should come into effect on 1 September 2021.

As these variations will be necessary to comply with a mandatory requirement of the Code, it will not be necessary to refer a variation request to either the Schools Adjudicator (in respect of maintained schools) or the ESFA (in respect of academies). See paragraphs 3.6 – 3.7 of the 2021 Code for further information on variations.

How will the new IAPLAC provision affect admissions in 2021/22?

All applications received before 1 September 2021 will have been processed in accordance with the existing (2014) Code, and offers made and places allocated will be unchanged. This includes those applications received before 1 September but where the decision has not yet been made by 1 September.

Any applications received on or after 1 September 2021 will need to be processed in accordance with the 2021 Code. By way of example, when dealing with in-year applications for the 2021/2022 academic year, children who are determined as being IAPLAC must be given equal highest priority with LAC and PLAC.

A school's waiting list must be ranked in accordance with its oversubscription criteria. This means that where a child is added to a waiting list before 1 September 2021, but meets the definition of an IAPLAC, the waiting list must be ranked again on 1 September following the 2021 Code coming into force, so that the child is given equal highest priority with LAC and PLAC. This may mean other children who were higher up on the waiting list, may be moved lower down the list.

Other references to previously looked after children in the Code

All references to previously looked after children in the 2021 Code mean children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after **as well as** those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.

This means that the other provisions in the 2021 Code which apply to PLAC (for example, in relation to the admission arrangements of schools with a religious character, selective arrangements, and boarding priority) apply to IAPLAC in exactly the same way as they do to PLAC.

In-year admissions

The 2021 Code requires local authorities, admission authorities and governing bodies to publish information about how in-year applications for their school(s) will be dealt with. For this year only, details about how in-year applications will be dealt between 1 November 2021 until 31 August 2022 must be published by 31 October. In all subsequent years, such information must be published by 31 August at the latest each year, to explain how in-year applications can be made and how they will be dealt with from 1 September until the following 31 August.

Taking forward other changes to give effect to the new provisions in the 2021 Code

Where an admission authority deems it necessary to make other changes to its admission arrangements in order to comply with a mandatory provision in the Code, it is not required to refer a variation request to either the Schools Adjudicator (in respect of maintained schools) or the ESFA (in respect of academies).